

SENATE, No. 1751

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED FEBRUARY 28, 2022

Sponsored by:

Senator ANTHONY M. BUCCO

District 25 (Morris and Somerset)

SYNOPSIS

Requires COAH to credit municipalities with units against fair share affordable housing obligation for certain types of housing; provides certain types of affordable housing units will be credited as two units.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning affordable housing and amending P.L.1985,
2 c.222.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
8 read as follows:

9 7. It shall be the duty of the council, seven months after the
10 confirmation of the last member initially appointed to the council,
11 or January 1, 1986, whichever is earlier, and from time to time
12 thereafter, to:

13 a. Determine housing regions of the State;

14 b. Estimate the present and prospective need for low and
15 moderate income housing at the State and regional levels;

16 c. Adopt criteria and guidelines for:

17 (1) Municipal determination of its present and prospective fair
18 share of the housing need in a given region which shall be
19 computed for a 10-year period.

20 Municipal fair share shall be determined after crediting on a one-
21 to-one basis each current unit of low and moderate income housing
22 of adequate standard, including any such housing constructed or
23 acquired as part of a housing program specifically intended to
24 provide housing for low and moderate income households. Notwithstanding any other law to the contrary, a municipality shall
25 be entitled to a credit for a unit if it demonstrates that (a) the
26 municipality issued a certificate of occupancy for the unit, which
27 was either newly constructed or rehabilitated between April 1, 1980
28 and December 15, 1986; (b) a construction code official certifies,
29 based upon a visual exterior survey, that the unit is in compliance
30 with pertinent construction code standards with respect to structural
31 elements, roofing, siding, doors and windows; (c) the household
32 occupying the unit certifies in writing, under penalty of perjury, that
33 it receives no greater income than that established pursuant to
34 section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for
35 moderate income housing; and (d) the unit for which credit is
36 sought is affordable to low and moderate income households under
37 the standards established by the council at the time of filing of the
38 petition for substantive certification. It shall be sufficient if the
39 certification required in subparagraph (c) is signed by one member
40 of the household. A certification submitted pursuant to this
41 paragraph shall be reviewable only by the council or its staff and
42 shall not be a public record;

44 Nothing in P.L.1995, c.81 shall affect the validity of substantive
45 certification granted by the council prior to November 21, 1994, or
46 of a judgment of compliance entered by any court of competent

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 jurisdiction prior to that date. Additionally, any municipality that
2 received substantive certification or a judgment of compliance prior
3 to November 21, 1994 and filed a motion prior to November 21,
4 1994 to amend substantive certification or a judgment of
5 compliance for the purpose of obtaining credits, shall be entitled to
6 a determination of its right to credits pursuant to the standards
7 established by the Legislature prior to P.L.1995, c.81. Any
8 municipality that filed a motion prior to November 21, 1994 for the
9 purpose of obtaining credits, which motion was supported by the
10 results of a completed survey performed pursuant to council rules,
11 shall be entitled to a determination of its right to credits pursuant to
12 the standards established by the Legislature prior to P.L.1995, c.81;

13 (2) Municipal adjustment of the present and prospective fair
14 share based upon available vacant and developable land,
15 infrastructure considerations or environmental or historic
16 preservation factors and adjustments shall be made whenever:

17 (a) The preservation of historically or important architecture and
18 sites and their environs or environmentally sensitive lands may be
19 jeopardized,

20 (b) The established pattern of development in the community
21 would be drastically altered,

22 (c) Adequate land for recreational, conservation or agricultural
23 and farmland preservation purposes would not be provided,

24 (d) Adequate open space would not be provided,

25 (e) The pattern of development is contrary to the planning
26 designations in the State Development and Redevelopment Plan
27 prepared pursuant to sections 1 through 12 of P.L.1985, c.398
28 (C.52:18A-196 et seq.),

29 (f) Vacant and developable land is not available in the
30 municipality, and

31 (g) Adequate public facilities and infrastructure capacities are
32 not available, or would result in costs prohibitive to the public if
33 provided.

34 (3) (Deleted by amendment, P.L.1993, c.31).

35 d. Provide population and household projections for the State
36 and housing regions;

37 e. In its discretion, place a limit, based on a percentage of
38 existing housing stock in a municipality and any other criteria
39 including employment opportunities which the council deems
40 appropriate, upon the aggregate number of units which may be
41 allocated to a municipality as its fair share of the region's present
42 and prospective need for low and moderate income housing. No
43 municipality shall be required to address a fair share of housing
44 units affordable to households with a gross household income of
45 less than 80% of the median gross household income beyond 1,000
46 units within ten years from the grant of substantive certification,
47 unless it is demonstrated, following objection by an interested party
48 and an evidentiary hearing, based upon the facts and circumstances

1 of the affected municipality that it is likely that the municipality
2 through its zoning powers could create a realistic opportunity for
3 more than 1,000 low and moderate income units within that ten-
4 year period. For the purposes of this section, the facts and
5 circumstances which shall determine whether a municipality's fair
6 share shall exceed 1,000 units, as provided above, shall be a finding
7 that the municipality has issued more than 5,000 certificates of
8 occupancy for residential units in the ten-year period preceding the
9 petition for substantive certification in connection with which the
10 objection was filed.

11 For the purpose of crediting low and moderate income housing
12 units in order to arrive at a determination of present and prospective
13 fair share, as set forth in paragraph (1) of subsection c. of this
14 section, housing units comprised in a community residence for the
15 developmentally disabled, as defined in section 2 of P.L.1977,
16 c.448 (C.30:11B-2), shall be fully credited pursuant to subsection f.
17 of this section and rules promulgated or to be promulgated by the
18 council, to the extent that the units are affordable to persons of low
19 and moderate income and are available to the general public.

20 The council, with respect to any municipality seeking substantive
21 certification, shall require that a minimum percentage of housing
22 units in any residential development resulting from a zoning change
23 made to a previously non-residentially-zoned property, where the
24 change in zoning precedes or follows the application for residential
25 development by no more than 24 months, be reserved for occupancy
26 by low or moderate income households, which percentage shall be
27 determined by the council based on economic feasibility with
28 consideration for the proposed density of development.

29 In carrying out the above duties, including, but not limited to,
30 present and prospective need estimations the council shall give
31 appropriate weight to pertinent research studies, government
32 reports, decisions of other branches of government, implementation
33 of the State Development and Redevelopment Plan prepared
34 pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196
35 et seq.) and public comment. To assist the council, the State
36 Planning Commission established under that act shall provide the
37 council annually with economic growth, development and decline
38 projections for each housing region for the next ten years. The
39 council shall develop procedures for periodically adjusting regional
40 need based upon the low and moderate income housing that is
41 provided in the region through any federal, State, municipal or
42 private housing program.

43 No housing unit subject to the provisions of section 5 of
44 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the
45 barrier free subcode adopted by the Commissioner of Community
46 Affairs pursuant to the "State Uniform Construction Code Act,"
47 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for

1 inclusion in the municipal fair share plan certified by the council
2 unless the unit complies with the requirements set forth thereunder.

3 f. For the purpose of crediting against a fair share obligation,
4 the council shall permit a municipality to satisfy no less than:

5 (1) two units of its fair share obligation for each unit of housing
6 restricted for very low income households, as that term is defined
7 pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304);

8 (2) two units of its fair share obligation for each unit of housing
9 located in a special needs housing project, as that term is defined in
10 section 2 of P.L.2004, c.70 (C.34:1B-21.24); and

11 (3) one unit of its fair share obligation for each bedroom in a
12 community residence which is affordable to persons of low and
13 moderate income. For the purposes of this section, "community
14 residence" means a shared living environment that provides housing
15 and treatment or specialized services needed to assist individuals
16 with special needs to live in community settings, but which is not
17 considered a health care facility within the meaning of the "Health
18 Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.)
19 and shall include, but not be limited to, group homes, halfway
20 houses, supervised apartment living arrangements, hostels, and
21 community residences for the developmentally disabled, as defined
22 in section 2 of P.L.1977, c.448 (C.30:11B-2).

23 (cf: P.L.2008, c.46, s.6)

24
25 2. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to
26 read as follows:

27 11. a. In adopting its housing element, the municipality may
28 provide for its fair share of low and moderate income housing by
29 means of any technique or combination of techniques which provide
30 a realistic opportunity for the provision of the fair share. The
31 housing element shall contain an analysis demonstrating that it will
32 provide such a realistic opportunity, and the municipality shall
33 establish that its land use and other relevant ordinances have been
34 revised to incorporate the provisions for low and moderate income
35 housing. In preparing the housing element, the municipality shall
36 consider the following techniques for providing low and moderate
37 income housing within the municipality, as well as such other
38 techniques as may be published by the council or proposed by the
39 municipality:

40 (1) Rezoning for densities necessary to assure the economic
41 viability of any inclusionary developments, either through
42 mandatory set-asides or density bonuses, as may be necessary to
43 meet all or part of the municipality's fair share in accordance with
44 the regulations of the council and the provisions of subsection h. of
45 this section;

46 (2) Determination of the total residential zoning necessary to
47 assure that the municipality's fair share is achieved;

1 (3) Determination of measures that the municipality will take to
2 assure that low and moderate income units remain affordable to low
3 and moderate income households for an appropriate period of not
4 less than six years;

5 (4) A plan for infrastructure expansion and rehabilitation if
6 necessary to assure the achievement of the municipality's fair share
7 of low and moderate income housing;

8 (5) Donation or use of municipally owned land or land
9 condemned by the municipality for purposes of providing low and
10 moderate income housing;

11 (6) Tax abatements for purposes of providing low and moderate
12 income housing;

13 (7) Utilization of funds obtained from any State or federal
14 subsidy toward the construction of low and moderate income
15 housing;

16 (8) Utilization of municipally generated funds toward the
17 construction of low and moderate income housing; and

18 (9) The purchase of privately owned real property used for
19 residential purposes at the value of all liens secured by the property,
20 excluding any tax liens, notwithstanding that the total amount of
21 debt secured by liens exceeds the appraised value of the property,
22 pursuant to regulations promulgated by the Commissioner of
23 Community Affairs pursuant to subsection b. of section 41 of
24 P.L.2000, c.126 (C.52:27D-311.2).

25 b. The municipality may provide for a phasing schedule for the
26 achievement of its fair share of low and moderate income housing.

27 c. (Deleted by amendment, P.L.2008, c.46)

28 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall
29 require a municipality to raise or expend municipal revenues in
30 order to provide low and moderate income housing.

31 e. When a municipality's housing element includes the
32 provision of rental housing units in a community residence for the
33 developmentally disabled, as defined in section 2 of P.L.1977,
34 c.448 (C.30:11B-2), which will be affordable to persons of low and
35 moderate income, and for which adequate measures to retain such
36 affordability pursuant to paragraph (3) of subsection a. of this
37 section are included in the housing element, those housing units
38 shall be fully credited in accordance with section 2 of P.L. _____,
39 c. _____ (C. _____) (pending before the Legislature as this bill and as
40 permitted under the rules of the council towards the fulfillment of
41 the municipality's fair share of low and moderate income housing.

42 f. It having been determined by the Legislature that the
43 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is
44 a public purpose, a municipality or municipalities may utilize public
45 monies to make donations, grants or loans of public funds for the
46 rehabilitation of deficient housing units and the provision of new or
47 substantially rehabilitated housing for low and moderate income
48 persons, providing that any private advantage is incidental.

1 g. A municipality which has received substantive certification
2 from the council, and which has actually effected the construction
3 of the affordable housing units it is obligated to provide, may
4 amend its affordable housing element or zoning ordinances without
5 the approval of the council.

6 h. Whenever affordable housing units are proposed to be
7 provided through an inclusionary development, a municipality shall
8 provide, through its zoning powers, incentives to the developer,
9 which shall include increased densities and reduced costs, in
10 accordance with the regulations of the council and this subsection.

11 i. The council, upon the application of a municipality and a
12 developer, may approve reduced affordable housing set-asides or
13 increased densities to ensure the economic feasibility of an
14 inclusionary development.

15 j. A municipality may enter into an agreement with a
16 developer or residential development owner to provide a preference
17 for affordable housing to low to moderate income veterans who
18 served in time of war or other emergency, as defined in section 1 of
19 P.L.1963, c.171 (C.54:4-8.10), of up to 50 percent of the affordable
20 units in that particular project. This preference shall be established
21 in the applicant selection process for available affordable units so
22 that applicants who are veterans who served in time of war or other
23 emergency, as referenced in this subsection, and who apply within
24 90 days of the initial marketing period shall receive preference for
25 the rental of the agreed-upon percentage of affordable units. After
26 the first 90 days of the initial 120-day marketing period, if any of
27 those units subject to the preference remain available, then
28 applicants from the general public shall be considered for
29 occupancy. Following the initial 120-day marketing period,
30 previously qualified applicants and future qualified applicants who
31 are veterans who served in time of war or other emergency, as
32 referenced in this subsection, shall be placed on a special waiting
33 list as well as the general waiting list. The veterans on the special
34 waiting list shall be given preference for affordable units, as the
35 units become available, whenever the percentage of preference-
36 occupied units falls below the agreed upon percentage. Any
37 agreement to provide affordable housing preferences for veterans
38 pursuant to this subsection shall not affect a municipality's ability to
39 receive credit for the unit from the council, or its successor.

40 (cf: P.L.2013, c.6, s.1)

41
42 3. This act shall take effect immediately.

43 44 45 STATEMENT

46
47 This bill provides municipalities with credit against their fair
48 share affordable housing obligation for bedrooms in community

1 residences and provides that certain types of affordable housing
2 units will be credited as two units.

3 Under the provisions of the bill, the Council on Affordable
4 Housing (COAH), or its successor body, would credit one unit
5 toward a municipality's fair share obligation for each bedroom in a
6 community residence. The bill defines a "community residence" as
7 a group home, supervised apartment, or other type of shared living
8 environment that provides housing and treatment or specialized
9 services needed to assist individuals with special needs to live in
10 community settings, but which is not considered a health care
11 facility. The term includes, but is not limited to, group homes,
12 halfway houses, supervised apartment living arrangements, hostels,
13 and community residences for the developmentally disabled.

14 The bill also requires COAH to credit at least two units toward a
15 municipality's fair share obligation for each unit of housing
16 restricted for very low income households and each unit of special
17 needs housing.